

The ABC of Advertising Standards

The Annual Statement of the Advertising Standards Authority 2004 - 2005



Our mission

To apply the advertising codes and uphold standards in all media on behalf of consumers, business and society.

Our vision

To be a customer-focused, best practice regulator, where expertise is valued and shared.

Our values

To fulfil our Mission and achieve our Vision, we intend to be:

A customer-focused organisation

- Helpful and accessible
- Independent of all pressures
- Accountable for our performance

A best practice regulator

- Fair and thorough
- Consistent and proportionate
- Reliable and ethical

An excellent team

- Alert and aware
- Responsible and co-operative
- Learning and growing professionally

The ASA 'one-stop shop' open for business

Chairman's introduction

November 1st 2004 marks a significant milestone in the history of advertising self-regulation in the UK. The Advertising Standards Authority (ASA), which up to now has had responsibility for standards in non-broadcast media only, assumes powers in respect of TV and radio advertisements, under contract from the communications regulator Ofcom. The ASA system will be working in a co-regulatory partnership with Ofcom, and for the first time there will be a 'one-stop shop' for all advertising issues and complaints.

Since commercial TV began in 1955, broadcast advertisements have been subject to statutory standards codes. Now day-to-day responsibility for the TV and radio advertising codes is being contracted out to the Broadcast Committee of Advertising Practice (BCAP), an industry body also known as CAP(Broadcast). Ofcom's licensees, the commercial TV channels and radio stations, must continue to observe the codes, but, if advertisements mislead or cause harm or distress, the matter will be dealt with first by the ASA, and not Ofcom.

A 'one-stop shop' makes sense – for consumers, advertisers and publishers. As digital media converge and advertisers use both broadcast and non-broadcast platforms, there will be greater consistency of decision-making between ads in different media.

Consumers will no longer have to juggle with several different regulators in order to get action on misleading, offensive or harmful advertising. An unsatisfactory feature of the former system was the very large numbers who complained to the ASA about TV and radio ads – even though there was nothing we could do to help.

In this our first Annual Statement we set out our objectives and targets for 2005. In future years, the Statement will also give full performance information, updating the results reported in the ASA Annual Report published in April. This year, we can only report on the work carried out by the ASA in non-broadcast advertising and by Ofcom in broadcast advertising in the first eight months of the year.

It is important to remember that Ofcom only regulates TV and radio. It does not regulate non-broadcast media. For this reason, Ofcom's contractual relationship is with the separate legal entities ASA (Broadcast) and BCAP. The non-broadcast ASA and CAP remain quite independent of any relationship with Ofcom. Formally, this is the Annual Statement of ASA, ASA(Broadcast), CAP and BCAP.

For more than 40 years, the ASA has regulated non-broadcast advertisements against the CAP Code. Now that model of effective self-regulation is being extended to TV and radio advertisements. The 'one-stop shop' is open for business.



Lord Borrie QC

Background to broadcast advertising co-regulation

Under the Communications Act 2003, Ofcom has continuing statutory responsibilities for broadcast standards. But the Act also enjoined Ofcom to de-regulate where necessary and to encourage effective self-regulation where appropriate.

Following public consultation and parliamentary approval, Ofcom has contracted out responsibility for its advertising standards functions to a self-regulatory system comprising a code-writing body CAP (Broadcast), an adjudicatory body ASA (Broadcast), and a funding body Basbof – all under the ASA 'one-stop shop' umbrella.

CAP (Broadcast) takes over responsibility for the existing TV and radio advertising codes. These run alongside the Committee of Advertising Practice's non-broadcast Code. CAP (Broadcast) membership includes advertiser, agency, TV and radio industry representatives. For information about CAP (Broadcast) and CAP (Non-broadcast) and to consult the advertising codes, see www.cap.org.uk.

The current TV and radio advertising codes will now be the responsibility of CAP (Broadcast) to maintain. Any changes will have to be supported by evidence, subject to public consultation, and would have to be approved by Ofcom. In addition, a new independent Advertising Advisory Committee (AAC) will advise CAP (Broadcast) on the codes.

The new self-regulatory system will be funded at arms-length by the Broadcast Advertising Board of Finance (Basbof). Like its non-broadcast equivalent, Basbof will collect a levy of 0.1% of the cost of airtime from advertisers. Thus the new system will be adequately funded without the ASA having to be concerned about which advertisers are contributing and how much. The levy system in non-broadcast advertising, administered by a parallel body, Asbof, has ensured that the ASA can stand up to even the biggest advertisers when mistakes have been made.

The ASA is the 'one-stop' letterbox for all advertising complaints. Formally, complaints about TV and radio will be adjudicated by a separate legal entity ASA (Broadcast) Ltd. Practically, there will be a lot of co-operation between the teams at the ASA.

TV channels and radio stations will have a continuing responsibility to 'clear' the ads they run prior to transmission. The clearance centres – BACC and RACC – will continue to do most of this pre-clearance work. The ASA and CAP Copy Advice, operating in non-broadcast media, will liaise with the clearance centres so that consistency can be achieved across media as far as possible.

At the end of the day, it is the TV and radio licensee's responsibility to ensure that ads do not breach the codes. Where a licensee will not co-operate with the ASA to secure the highest standards, the ASA will refer the broadcaster to Ofcom for regulatory action. This might include a warning or a fine – or, if matters did not improve, the loss of a licence altogether.

The procedures for dealing with complaints are set out on the ASA website www.asa.org.uk. A number of key staff have transferred from Ofcom and the 'one-stop shop' has staffed up to meet the anticipated level of business.

Preparing for broadcast advertising co-regulation

To make a 'one-stop shop' approach possible, there have had to be changes at the ASA. The aim has been to achieve a single point of reference for consumers, advertisers, and broadcasters, while respecting the different obligations inherent in broadcast and non-broadcast media – the one licensed and the other not.

Two parallel companies have been established - ASA Ltd and ASA (Broadcast) Ltd – so that adjudications are always soundly based on the appropriate code and legally water-tight. Once the system is established, there will also be no cross-subsidy of the cost of regulating broadcast media from non-broadcast levy funding.

Alongside the non-broadcast Committee of Advertising Practice, BCAP Ltd, known as CAP (Broadcast), has been established to 'own' the TV and radio advertising codes.

ASA (Broadcast), BCAP Ltd and Basbof signed a Memorandum of Understanding (MOU) with Ofcom, establishing the ground rules for the 'co-regulation' of TV and radio advertising. The MOU sets out the expectations of all the parties and the ways in which the 'one-stop shop' ASA will be accountable for its performance. The MOU may be consulted on the Ofcom website www.ofcom.org.uk.

A formal contract (Deed) has been agreed between Ofcom and 'the co-regulatory parties'.

Both the MOU and the Deed respect the independence of the 'one-stop shop' in its day-to-day operations and Council adjudications, and, in particular, the unique self-regulatory responsibilities of the ASA/CAP system for non-broadcast advertising.

The Advertising Advisory Committee (AAC) is in the process of being appointed following public advertisement. The Committee will start its work no later than 1 January 2005.

The Council of the ASA has been expanded to 15 members plus the Chairman. Ten of the Council are Independent Members, appointed by the Chairman following public advertisement and a rigorous interviewing process involving outside assessors. The remaining minority of the Council are Industry Members, chosen by the Chairman for their experience of the advertising business, either as advertisers, in an agency, or in non-broadcast or broadcast media.

Council will consider broadcast and non-broadcast business separately and members have been organised into two parallel teams for this purpose. There will be significant overlap between these two 'councils', with no fewer than nine of the 15 Council members considering both broadcast and non-broadcast ads. Six others, three broadcast and three non-broadcast, will bring the 'council' strength to twelve for each adjudication. This minority will always include the appropriate media specialist Industry Member. The Chairman will chair both 'councils'. Details of Councils members and the 'council' arrangement are set out on page 4 overleaf.

Promotion of the new ASA system includes a corporate re-branding and a relaunch of the ASA website at www.asa.org.uk. Additionally, TV channels and radio stations are committed to making the existence of the 'one-stop shop' known to viewers and listeners through appropriate presentation trails.

Council members



Lord Borrie QC
Chairman

— Non-broadcast council
— Broadcast council



David Lipsey
Working Peer



Sunil Gadhia
Chief Executive
Officer and Partner
Stephenson
Harwood Solicitors



Jean Coussins
Chief Executive
Portman Group



Martyn Percy
Principal
Cuddesdon
theological college



Chitra Bharucha
Consultant
Haematologist



Donald Treford
Visiting Professor
University of
Sheffield



Christine Farnish
Chief Executive
National
Association of
Pension Funds



Pauline Thomas
Magistrate



Neil Watts
Secondary School
Headteacher



Alison Goodman
Fundraising
Manager
Terrence
Higgins Trust



Mike Ironside
Marketing
consultant



David McNair
Chief Executive
Food From Britain



Dan O'Donoghue
Head of Strategic
Planning
Publicis Worldwide



Susan Murray
Non-Executive
Director
Littlewoods



Nigel Walmsley
Chairman
Broadcasters'
Audience Research
Board (BARB)

Objectives for 2005

We have identified twelve key objectives for the ASA 'one-stop shop' in its first full year of operation. The emphasis is on customer-focus and best-practice regulation delivered by an excellent team. We shall account for our performance against these objectives in an Annual Report each April and set out our plans for the year ahead in an Annual Statement each October.

01 Deliver the benefits of a 'one-stop shop' to consumers and competitors, acting decisively on complaints and addressing the challenges of new media and multi-platform campaigns.

02 Build awareness and understanding of the new system through a measured communications programme, starting with broadcasters, advertisers and agencies. Reassure non-broadcast media about continued independence.

03 Act in the public interest at all times, listening to the points of view of complainants, advertisers and media.

04 Monitor performance through fullest management information and customer satisfaction research, and comply with the reporting obligations contained in the contract with Ofcom.

05 Use enhanced statistical information to manage caseloads promptly and efficiently, but avoid mistakes born of carelessness.

06 Challenge non-compliant advertisements while helping advertisers pre-publication with Help Notes, policy advice and, for non-broadcast media, CAP Copy Advice. Work closely with the clearance centres (BACC and RACC).

07 Progressively integrate new ASA people and procedures and co-ordinate non-broadcast and broadcast work to achieve 'joined up' regulation. Work with other regulatory bodies to achieve effective enforcement co-operation.

08 Be open and honest, truthful and transparent in all our dealings, explaining what we are doing and why at each stage.

09 Respond appropriately to public policy debates on sensitive issues and follow developments in competitive markets. Take opportunities to align the provisions of the advertising codes.

10 Train new managers to give feedback and appraise staff, and develop agreed Leadership Competencies.

11 Develop and monitor an equal opportunities policy covering sex, ethnic origin, and disability.

12 Put into effect an action plan to support a Learning Culture where staff are encouraged to share expertise and to develop their skills.

Standards of Service

Responding quickly to your enquiries

We shall aim to answer your telephone call to our switchboard (020 7492 2222) within four rings during business hours.

Our aim is to reply to all correspondence within ten working days. We aim to resolve complaints without undue delay, but complaints that require investigation take longer than the average. The assessment of complaints by commercial competitors can be protracted.

Dealing thoroughly with your complaint

If you decide to complain to the ASA about an advertisement, we are committed to acknowledging your complaint within five days of receiving it. If your complaint is not for us, but for another regulatory body, we shall tell you at this point; otherwise we shall tell you how our procedures will be applied.

If your complaint falls within the remit of the ASA, we shall consider whether there has been a possible breach of the codes. We shall keep you informed of progress with the handling of your complaint at intervals of no longer than fifteen working days.

From the point at which we decide to investigate your complaint, a named executive will be in charge of the case and will act as a continuing point of contact with you.

If you are dissatisfied with the ASA's decision on your complaint you may be able to request a review by the Independent Reviewer of ASA Adjudications provided you write to him at Bloomsbury House, 74-77 Great Russell Street, London WC1B 3DA, within 21 days of receiving our formal adjudication. Details of the Review procedure are set out in the Codes.

Being accessible to complainants

Our website www.asa.org.uk gives access to information about the self-regulatory system and the Codes, explains how the ASA operates, gives details of complaints and adjudications, and profiles members of the ASA's Council and staff.

Members of staff will at all times identify themselves by name and endeavour to be as polite and helpful as possible. If you feel that a member of staff is not living up to the high standards we set ourselves, you should write to the Director General who will look into the matter.

The ASA is independent of government and the advertising industry. A majority of our Council are members of the public who are appointed following public advertisement.

The ASA costs the taxpayer nothing. We shall continue to investigate complaints free of charge.

Improving our service

We shall regularly publish statistics showing the number of complaints received and resolved.

We shall publish information on our performance in meeting these standards of service commitments, and the average time taken to deal with complaints.

Key performance indicators

The following table sets out the key performance figures with regard to actual achievements to date (January – August 2004) and targets for 2005.

The figures for 2004 for Non-Broadcast complaints reflect the work done by the ASA and those for Broadcast are those achieved by Ofcom.

Ofcom will report their performance statistics for 2004 in due course. Broadcast statistics are included here only in order to provide a comprehensive benchmark of performance and objectives for the new 'one-stop shop'.

Key Performance Indicator	2004 Performance to date	2005 Target
Number of complaints received		
Non-broadcast (ASA)		To report trend data on complaints received and handled - in the Annual Report (April) and the Annual Statement (October)
Including duplicates	8,283	
Excluding duplicates	6,660	
Broadcast (Ofcom)		
Including duplicates	6,147	
Excluding duplicates	2,329	
Number of complaints resolved		
Non-broadcast (ASA)		
Including duplicates	8,650	
Excluding duplicates	6,805	
Of which		
Formally investigated	594	
Informally resolved	576	
Not investigated	4,955	
Investigation not justified	397	
Other	283	
Ads amended or withdrawn	962	
Formal breaches	255	
Informal breaches	465	
Withdrawn	242	
Broadcast (Ofcom)		To report trend data on upheld complaints and complaints leading to sanctions - in the Annual Report (April) and the Annual Statement (October)
Including duplicates		
Excluding duplicates		
Of which		
Misleading		
Offensiveness		
Harmfulness		
Misc		
Formal breaches	64	
Turnaround of non-broadcast complaints (ASA)		
Average time taken to deal with complaints	29 days	25 days
Turnaround of broadcast complaints (Ofcom)		¹² ITC Performance
Not investigated (no viewing of ad)	Within 5 working days	97%
Not investigated (ad viewed)	Within 10 working days	98%
Standard investigation	Within 8 weeks	76%
Complex investigation	Within 3 months	93%
CAP Copy Advice		
Number of Copy Advice cases (written)	2,697	
% Copy Advice cases handled within 24 hours	98%	90%
Web stats		
Total visitor sessions		
ASA website	895,967	
CAP website	84,644	
Customer Satisfaction³		Rolling Customer Satisfaction surveys will feed into the six-monthly public reporting
Complainants	60%	
Advertisers	69%	

¹ The MOU notes 'Complex cases requiring resolution of disputes between competitors have typically taken longer than this to resolve'

² The MOU sets the benchmark for ASA average turnaround times at 80% of the performance achieved by the ITC in its last 6 months of operation (July-Dec 2003) prior to its move to Ofcom.

³ Overall ASA customer satisfaction, Jan – Jun 2004

Note The Memorandum of Understanding between the advertising industry, the ASA and Ofcom states that a probationary period of two years shall operate from the date of implementation of the new arrangements. After this time, complaint levels will be clearer and the parties will be better able to assess the volume of regulatory activity required of the self-regulatory system. During the probationary period, the Parties should take a pragmatic view of performance requirements that may turn out to be unrealistic if, for example, the level of complaints were significantly, and to a degree not currently predictable, higher in comparison with the aggregate of complaints received by the former regulators, the Independent Television Commission (ITC), the Radio Authority (RAU) and the Broadcasting Standards Commission (BSC) in their final year of operation. ASA(B) should not be penalised for performance factors beyond its control.

Independent Reviewer

Sir John Caines



The non-broadcast ASA system has, since 1999, featured a process of Independent Review, enabling Council to look again at adjudications that may be flawed or where there is new evidence that was not considered in the original investigation.

The Independent Reviewer of ASA Adjudications is Sir John Caines, KCB, a former Whitehall Permanent Secretary.

The Independent Reviewer's terms of reference for non-broadcast adjudications are set out in the CAP Code.

A feature of the new 'one-stop shop' is that the Independent Reviewer will now consider Requests for Review of Council adjudications in both non-broadcast and broadcast media.

This review procedure is something new for broadcast advertising. Previously, appeals against the decision of the regulator were considered internally.

As with non-broadcast adjudications, the Reviewer's terms of reference are carefully framed.

Advertisers, complainants or broadcasters contemplating a Request for Review should study the relevant terms of reference carefully. They are set out on the ASA website www.asa.org.uk. The non-broadcast terms of reference are to be found at clause 60.38 of the CAP Code. The broadcast terms of reference are set out in the Guidance Note number 3.

Requests for a review should contain a full statement of the grounds, be in writing and be addressed to the Independent Reviewer of ASA Adjudications, Bloomsbury House, 74-77 Great Russell Street, London, WC1B 3DA. They should be sent within 21 days of the date on the ASA's letter of notification of an adjudication. The Independent Reviewer may waive this 21-day time limit if he judges it fair and reasonable to do so.

Requests should come only from the complainant(s) or marketer/licensee. Those from the marketer/licensee or from an industry complainant should be signed by the Chairman, Chief Executive or equivalent; requests made only by their solicitor or agency will not be accepted. All dealings with the Independent Reviewer must be in writing.

The Council's adjudication on reviewed cases is final.

Adjudications that are revised following a review will be published on www.asa.org.uk. The Independent Reviewer contributes a report of his activities to the ASA Annual Report.

How to Complain

It is quick and easy to register a complaint about an advertisement with the ASA – and it's free.

You can complain to us if you

- Think there is something wrong with an advertisement you have seen
- Have difficulty getting goods or a refund for items bought by mail order or through television shopping channels
- Think a special offer, prize draw or other sales promotion has been unfairly run
- Want to stop direct mail from companies sent either by post, fax, text message or e-mail.

How to complain

If you want to complain about a TV, radio or cinema commercial, national newspaper advertisement or poster, use the form on our website at www.asa.org.uk. If you need help making your complaint, you can telephone us on 020 7492 2222

For any other type of advertisement, such as a local newspaper ad, mailing, online banner or pop-up ad, leaflet or brochure, send us your complaint, preferably with a copy of the ad attached, by post, fax or via the online complaints form on our website at www.asa.org.uk.

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Mid City Place
71 High Holborn
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Fax 020 7242 3696
Textphone 020 7242 8159

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Telephone 020 7492 2222 Fax 020 7242 3696
Textphone 020 7242 8159 E-mail enquiries@asa.org.uk
Online www.asa.org.uk

